

KAREN P. HEWITT
United States Attorney
DAVID D. LESHNER
Assistant U.S. Attorney
California State Bar No. 207815
Federal Office Building
880 Front Street, Room 6293
San Diego, California 92101-8893
Telephone: (619) 557-7163
David.Leshner@usdoj.gov

Attorneys for Plaintiff
United States of America

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) Criminal Case No. 08-CR-2023-W

Plaintiff,

DATE: July 21, 2008

TIME: 2:00 p.m.

v.

MIGUEL ANGEL AVILA-QUEZADA,

**UNITED STATES' NOTICE OF MOTIONS
AND MOTIONS FOR:**

Defendant.

(1) FINGERPRINT EXEMPLARS

(2) RECIPROCAL DISCOVERY

COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and through its counsel,
Karen P. Hewitt, United States Attorney, and David D. Leshner, Assistant United States Attorney, and
hereby files its Motions for Fingerprint Exemplars and Reciprocal Discovery in the above-referenced
case. Said motions are based upon the files and records of this case together with the attached
memorandum of points and authorities.

///

///

///

///

///

///

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I**

3 **STATEMENT OF THE CASE**

4 On June 18, 2008, a one-count indictment was filed charging defendant Miguel Angel Avila-
5 Quezada with a violation of Title 8, United States Code, Sections 1326(a) and (b). Defendant was
6 arraigned on the indictment on June 23, 2008 and entered a plea of not guilty.

7 **II**

8 **STATEMENT OF FACTS**

9 **A. Defendant's Apprehension**

10 On April 23, 2008, Border Patrol Agent V. Sivilli was on duty near Japatul Valley Road in
11 Jamul, CA, approximately five miles west of the Tecate, CA Port of Entry and twelve miles north of the
12 international border. At approximately 4:45 p.m., Agent Sivilli and Border Patrol Agent S. Barr
13 responded to a seismic sensor device activation in the area. The agents observed footprints on a trail
14 in the vicinity of the seismic device and followed the footprints to an old trailer on Private Drive in
15 Jamul. Upon approaching the trailer, the agents viewed six individuals attempting to hide inside.

16 The agents entered the trailer and conducted field interviews. All six individuals, including
17 Defendant, admitted to being a citizens of Mexico without documents allowing them to enter or remain
18 in the United States. At that point, the agents placed all six individuals under arrest.

19 At approximately 9:32 p.m. on April 23, Defendant received Miranda warnings and agreed to
20 answer questions. Defendant stated that he is a citizen of Mexico and that he did not possess any
21 documents allowing him to enter the United States. According to Defendant, he previously was
22 removed from the United States to Mexico, and he re-entered the United States on April 23 through the
23 mountains. Defendant further stated that his destination was Los Angeles, CA.

24 **B. Defendant's Immigration History**

25 Defendant is a citizen of Mexico. On or about April 25, 2000, Defendant was removed from the
26 United States to Mexico pursuant to an Order of an Immigration Judge. Defendant subsequently was
27 removed from the United States to Mexico on March 28, 2008.

28 ///

C. Defendant's Criminal History

Defendant's criminal history includes the following convictions:

CONVICTION DATE	COURT	CHARGE	TERM
11/18/1997	CASC Orange	Assault with Firearm on Person (Penal Code § 245(a)(2))	5 years prison
01/08/2007	CASC Orange	Possession of Controlled Substance (Health & Safety Code § 11377(a))	2 years prison

III

UNITED STATES' MOTIONS

A. Motion For Fingerprint Exemplars

The Government requests that the Court order that Defendant make himself available for fingerprinting by the Government's fingerprint expert. See United States v. Ortiz-Hernandez, 427 F.3d 567, 576-77 (9th Cir. 2005) (Government may have defendant fingerprinted and use criminal and immigration records in Section 1326 prosecution). Identifying physical characteristics, including fingerprints, are not testimonial in nature, and the collection and use of such evidence would not violate Defendant's Fifth Amendment right against self-incrimination. United States v. DePalma, 414 F.2d 394, 397 (9th Cir. 1969). See also Schmerber v. California, 384 U.S. 757, 761 (1966) (withdrawal of blood is not testimonial).

B. Motion For Reciprocal Discovery

The Government has and will continue to fully comply with its discovery obligations. To date, the Government has provided Defendant with 42 pages of discovery and one DVD, including reports of his arrest, his rap sheet, and copies of immigration and conviction documents.

The Government moves the Court to order Defendant to provide all reciprocal discovery to which the United States is entitled under Federal Rules of Criminal Procedure 16(b) and 26.2. Specifically, Rule 16(b)(1) requires Defendant to disclose to the United States all exhibits, documents and reports of testing or examination which Defendant intends to use in his case-in-chief at trial and a written summary of the names, anticipated testimony, and bases for opinions of experts the defendant intends to call at trial under Rules 702, 703, and 705 of the Federal Rules of Evidence.

IV

CONCLUSION

For the foregoing reasons, the Government respectfully requests that the Court grant its motions.

DATED: July 2, 2008.

Respectfully submitted,

Karen P. Hewitt
United States Attorney

s/ David D. Leshner
DAVID D. LESHNER
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	Case No. 08-CR-2023-W
)	
Plaintiff,)	
)	
v.)	
)	CERTIFICATE OF SERVICE
MIGUEL ANGEL AVILA-QUEZADA,)	
)	
Defendant.)	
_____)	

IT IS HEREBY CERTIFIED THAT:

I, DAVID D. LESHNER, am a citizen of the United States and am at least eighteen years of age.
My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of **UNITED STATES NOTICE OF MOTIONS AND MOTIONS FOR FINGERPRINT EXEMPLARS AND RECIPROCAL DISCOVERY** on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Lisa Kay Baughman, Esq.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 2, 2008.

/s/ David D. Leshner
DAVID D. LESHNER